

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB40)

Received: 02/14/2003

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Tony Staskunas (608) 266-0620

By/Representing: Adrienne

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - guns and weapons
Beverages

Extra Copies: rlr

Submit via email: YES

Requester's email: Rep.Staskunas@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibited blood alcohol content for retired peace officers who carry a concealed weapon

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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FE Sent For:

<END>

Dsida, Michael

From: Ramirez, Adrienne
Sent: Tuesday, February 18, 2003 2:04 PM
To: Dsida, Michael
Subject: RE: amendment drafting request

Mike, I finally had a chance to talk with Tony. He said we should be consistent with penalties. Therefore, yes it should be a Class A misdemeanor for exceeding .02 and yes a violation should invalidate their authorization to carry a concealed weapon. Finally, he said no we should not have a higher standard for implied consent.

Thanks again,
Adrienne



P/c to Adrienne —

No implied consent provisions.

-----Original Message-----

From: Dsida, Michael
Sent: Monday, February 17, 2003 10:33 AM
To: Ramirez, Adrienne
Subject: RE: amendment drafting request

One other question -- do you want the penalty for a retired peace officer who is carrying a concealed weapon while his or her BAC exceeds .02 to be subject to the same penalty that applies to unlawfully carrying a concealed weapon under current law? (It is a Class A misdemeanor.)

-----Original Message-----

From: Dsida, Michael
Sent: Friday, February 14, 2003 1:25 PM
To: Ramirez, Adrienne
Subject: RE: amendment drafting request

As it turns out, I can handle everything that I covered in last session's drafter's note without even sending it to you. (I can send it to you though, if you still want to see it.)

The enforcement issue that I mentioned, however, still needs to be addressed. As we discussed, the laws relating to vehicles (including ATVs, boats, and snowmobiles) include provisions under which vehicle operators impliedly consent to the administration of blood, breath, or urine tests to determine their compliance with laws relating to prohibited alcohol content. Other statutes address how such tests are to be administered and what penalties apply to persons who unlawfully refuse to consent to those tests. The floor amendment did not contain any comparable provisions. Should this amendment? Please note that notwithstanding the absence of those provisions, law enforcement officers would still be permitted to conduct blood, breath, or urine tests after arresting a retired peace officer for carrying a concealed weapon with a blood or breath alcohol content exceeding 0.02. *Schmerber v. California*, 384 U.S. 757 (1966); *State v. Bohling*, 173 Wis. 2d 529 (1993); *State v. Krajewski*, 2002 WI 97, 255 Wis. 2d 98. The officer, however, would need to have probable cause to believe that the person committed that offense before arresting him or her -- a higher standard than what is required for administering a blood, breath, or urine test to the driver of a car.

Finally, the floor amendment did not require suspension or revocation of the license of a person arrested for or convicted of violating the "absolute sobriety" provision. Should the amendment that you are requesting now invalidate the retired peace officer's authorization to carry a concealed weapon?

Please feel free to call if you want to discuss these issues. I would also be happy to come to your office if that works better for you or Rep. Staskunas.

Thanks.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

-----Original Message-----

From: Ramirez, Adrienne
Sent: Friday, February 14, 2003 11:18 AM
To: Dsida, Michael
Subject: amendment drafting request

Mike-

I have another drafting request for you. Last session you drafted LRBf87/1, introduced as AA8 to AB 675, which provided that no person shall be allowed to carry a concealed weapon if they have a blood alcohol content exceeding .02. Tony has asked that you draft this amendment to AB 40 relating to peace officers carrying concealed weapons.

We anticipate an executive session will be scheduled for AB 40 the last week of February.

Thanks for your help.

Adrienne
Office of Rep. Staskunas
6-0620



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0094(P1)

MGD: /.....

cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO 2003 ASSEMBLY BILL 40

FRI.
NOON

1 At the locations indicated, amend the bill as follows:

2 1. Page 4, line 17: after that line insert:

3 (dm) The person has not been convicted of a violation of s. 941.23 (2) or 941.237

4 (2). This paragraph does not apply to a conviction resulting from acts occurring

5 before the person obtained a state identification card, as defined in s. 941.23 (1) (b),

6 containing a designation under s. 343.17 (3) (a) 14." Ⓣ ←

7 2. Page 5, line 13: delete "firearms restriction record search" and substitute
8 "criminal history check".

9 3. Page 6, line 21: delete the material beginning with that line and ending on
10 page 7, line 2, and substitute:

11 "175.33 Criminal history checks for retired peace officers. (1) In this
12 section, "criminal history check" means a search of department of justice records

plain
quotation
mark

1 consisting of a firearms restriction record search, as defined in s. 175.35 (1) (at), and
2 a search to determine whether a person has violated s. 941.23 (2) or 941.237 (2).

3 (2) At the request of the law enforcement standards board under s. 165.87 (4)
4 (c), the department of justice shall conduct a criminal history check. The department
5 may not charge a fee for a criminal history check conducted under this subsection.
6 The department shall promulgate rules prescribing the manner by which criminal
7 history checks are to be conducted under this subsection.”.

8 4. Page 8, line 23: delete “175.33 or”.

9 5. Page 8, line 23: after “(c)” insert “or a criminal history check under s.
10 175.33”.

11 6. Page 9, line 3: delete “175.33 or”.

12 7. Page 9, line 3: after “(c)” insert “or a criminal history check under s. 175.33”.

13 8. Page 9, line 9: delete “175.33 or”.

14 9. Page 9, line 10: after “(c)” insert “or a criminal history check under s.
15 175.33”.

16 10. Page 9, line 14: delete “175.33 or”.

17 11. Page 9, line 14: after “(c)” insert “or a criminal history check under s.
18 175.33”.

19 12. Page 9, line 21: delete “175.33 or”.

20 13. Page 9, line 22: after “(c)” insert “or a criminal history check under s.
21 175.33”.

22 14. Page 10, line 3: delete “175.33 or”.

1 **15.** Page 10, line 3: after “(c)” insert “or a criminal history check under s.
2 175.33”.

3 **16.** Page 10, line 3: after that line insert:

4 “**SECTION 15g.** 885.235 (1g) (intro.) of the statutes is amended to read:

5 885.235 (1g) (intro.) In any action or proceeding in which it is material to prove
6 that a person was under the influence of an intoxicant or had a prohibited alcohol
7 concentration or a specified alcohol concentration while operating or driving a motor
8 vehicle or, if the vehicle is a commercial motor vehicle, on duty time, while operating
9 a motorboat, except a sailboat operating under sail alone, while operating a
10 snowmobile, while operating an all-terrain vehicle, while going armed with a
11 concealed weapon, or while handling or going armed with a firearm, evidence of the ✓
12 amount of alcohol in the person’s blood at the time in question, as shown by chemical
13 analysis of a sample of the person’s blood or urine or evidence of the amount of alcohol
14 in the person’s breath, is admissible on the issue of whether he or she was under the
15 influence of an intoxicant or had a prohibited alcohol concentration or a specified
16 alcohol concentration if the sample was taken within 3 hours after the event to be
17 proved. The chemical analysis shall be given effect as follows without requiring any
18 expert testimony as to its effect:

History: 1971 c. 40; 1973 c. 102; 1981 c. 20, 184; 1983 a. 74, 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 399; 1989 a. 105; 1991 a. 277; 1995 a. 436, 448; 1997 a. 35, 198.

19 **SECTION 15r .** 885.235 (1g) (e) of the statutes is created to read:

20 885.235 (1g) (e) In cases brought under s. 941.23 (2) or 941.237 (2) in which the
21 state seeks to prove that a person had an alcohol concentration, as defined in s.
22 340.01 (1v), of 0.02 or more, the fact that the analysis shows that the person had an
23 alcohol concentration of more than 0.0 but less than 0.02 is relevant evidence on the
24 issue of the person having an alcohol concentration of 0.02 or more but is not to be

1 given any prima facie effect. The fact that the analysis shows that the person had
2 an alcohol concentration of 0.02 or more is prima facie evidence that he or she had
3 an alcohol concentration of 0.02 or more.” ✓

4 **17.** Page 10, line 10: delete “175.33 or”.

5 **18.** Page 10, line 11: after “(c)” insert “or a criminal history check under s.
6 175.33”.

7 **19.** Page 10, line 19: delete lines 19 to 22 and substitute:

8 “(a) “Qualified retired peace officer” means a person who meets all of the
9 following requirements:

10 1. The person’s request for authorization to carry a concealed weapon under s.
11 165.87 has been granted.

12 2. The person continues to meet the requirements for the authorization.

13 3. The person holds a valid state identification card containing a designation
14 under s. 343.17 (3) (a) 14. ✓

15 4. The person’s alcohol concentration, as defined in s. 340.01 (1v), is less than
16 0.02.”. ✓

17 (END)